

20



POSTED ON WEBSITE

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re	}	Case No. 10-64847-B-7
Scott Rich,		DC No. UST-1
Debtor.		

MEMORANDUM DECISION REGARDING U.S. TRUSTEE'S MOTION FOR REVIEW AND DISGORGEMENT OF ATTORNEY'S FEES, IMPOSITION OF MONETARY SANCTIONS, AND INJUNCTION AGAINST E-FILE

This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Robin Tubesing, Esq., appeared on behalf of the Acting United States Trustee, August B. Landis, Esq.

Christian D. Jinkerson, Esq., of Klein, DeNatale, Goldner, et al., appeared on behalf of the debtor, Scott Rich.

Joel D. Winter, Esq., appeared on behalf of himself.

Before the court is a motion by the United States Trustee ("UST") for (1) the review and disgorgement of fees paid to attorney Joel D. Winter Esq. ("Winter") pursuant to 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2017,¹ (2) the

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330, as enacted and promulgated *after* October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (enacted Apr. 20, 2005). "Rule" or "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9036. "L.B.R." or "Local Bankruptcy Rule" references are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California (effective Jan. 29, 2010). "L.D.R." or "Local District Rule"

1 imposition of monetary sanctions against Winter pursuant to Local Bankruptcy Rule
2 9004-1(c)(1), and (3) an injunction pursuant to § 105(a) to prevent Winter from
3 electronically filing any document in this District which requires the client's signature
4 without also filing a copy of the original version bearing the client's "wet signature."
5 The UST filed this motion after the debtor, Scott Rich ("Rich" or the "Debtor") alleged
6 that Winter had improperly handled his case with regard to the preparation, signing, and
7 filing of the petition, schedules, and other documents.

8 After the first hearing on the motion, the court ordered Winter to disgorge the
9 attorney's fees he received in connection with this case in the amount of \$1,175² and
10 requested that the UST further investigate some of Winter's other cases for similar
11 misconduct before ruling on the sanction request. The UST examined 25 additional
12 cases and submitted his findings to the court in a verified report. The report found
13 widespread misconduct by Winter in each of the 25 cases, findings that Winter does not
14 dispute.

15 For the reasons set forth below and after careful consideration of the record, the
16 court will order the following: (1) Winter shall comply with the court's civil minute
17 order dated July 13, 2011, and disgorge to the Debtor the attorney's fees he received in
18 the amount of \$1,175; (2) Winter shall pay a monetary sanction to the court in the
19 amount of \$2,000 for violating the Bankruptcy Rules and the Local Bankruptcy Rules in
20 a significant number of his cases; (3) Winter shall reimburse the UST for his costs
21 attributable to filing the adversary complaint against Winter's client, bringing this
22 motion, and investigating Winter's other cases; and (4) Winter shall, for a period of one
23 year, not electronically file any document bearing the virtual signature of his client

24 _____
25 references are to the Local Rules of Practice for the United States District Court, Eastern District
26 of California (effective Feb. 8, 2011).

27 ²Winter has not filed anything to indicate that the fees were disgorged in compliance with
28 the civil minute order dated July 13, 2011.

1 without also filing a copy of the originally “wet signed” document.

2 This memorandum decision contains the court’s findings of fact and conclusions
3 of law required by Federal Rule of Civil Procedure 52(a), made applicable to this
4 contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c). The court
5 has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 105, and
6 General Order Nos. 182 and 330 of the U.S. District Court for the Eastern District of
7 California. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A).

8 **Background and Findings of Fact.**

9 On December 27, 2010, a voluntary chapter 7 petition was filed for Rich by his
10 attorney Winter using the court’s electronic case filing (“ECF”) system. Winter received
11 a fee in the amount of \$1,175 from Rich. Along with the petition, Rich’s Schedules A
12 through J, Statement of Financial Affairs, Statement of Intention, and Official Form 22A
13 were also filed electronically. On the last pages of these documents, where a debtor must
14 verify under penalty of perjury that the information provided in the documents is true and
15 correct, Rich’s electronic “virtual” signature appears on the signature line as “/s/ Scott
16 Rich.” Winter filed these documents using his registered ECF user account.

17 On April 5, 2011, the UST initiated an adversary proceeding against Rich, seeking
18 to deny his discharge under § 727(a)(4)(A) and (a)(2)(A). The UST’s complaint was
19 based on the fact that Rich’s schedules did not disclose various pre-petition transfers of
20 real property and personal property. After obtaining new counsel in both the main
21 bankruptcy and adversary proceeding, Rich answered the complaint. Rich denied the
22 allegations that he had reviewed, approved, and signed the petition, schedules, and
23 statements before Winter filed them. At the initial status conference, the court issued an
24 order directing Winter to produce his file with the originally signed documents at issue.
25 He was unable to do so and acknowledged that they had been filed without having been
26 reviewed and signed by Rich. Subsequently, Rich filed amended schedules and
27 statements and turned over enough funds to the chapter 7 trustee to pay all of his claims
28 in full. As a result of Rich’s defense and subsequent actions, the UST withdrew his

1 complaint, and Rich received his discharge.

2 Due to the facts brought to light in Rich's defense of the adversary proceeding,
3 the UST filed a motion requesting the court to review Winter's conduct and order
4 disgorgement of the attorney's fees Rich had paid to Winter. The UST also requested
5 monetary sanctions of not less than \$1,000 for Winter's failure to produce the original
6 documents personally signed by Rich, and to bar Winter from filing any petition or
7 document without also filing the signed original version (the "Motion"). The Motion
8 was supported by Rich's declaration, where he waived his right to the attorney-client
9 privilege for any communications made between himself and Winter.

10 Winter filed an unsigned response to the Motion. In his response, Winter
11 admitted to no longer being in possession of Rich's original petition, schedules, and
12 statements, thereby leaving open the factual issue of whether Rich had actually signed
13 the documents prior to their filing. However, Winter did admit that he failed to have
14 Rich verify the filed documents. He believed this inaction to be ultimately
15 inconsequential, stating that Rich's verification "only matters if the omissions or errors
16 [in the schedules and statements] would have been identified by [Rich] and corrected."
17 Nevertheless, Winter felt his conduct "was in compliance with the spirit of the law."

18 At the hearing, after addressing Winter's action and their significance, the court
19 ordered that Winter disgorge the fees he had received from Rich in the amount of \$1,175
20 and to file a proof of disgorgement. The record does not show that Winter ever complied
21 with the court's order so the court must infer, for purposes of this ruling, that the fees
22 have not yet been disgorged.

23 The court further requested that the UST investigate a sample of 25 other cases
24 filed by Winter in 2010 and 2011,³ in order to determine whether the document
25
26

27 ³ According to the court's records, Winter had filed, on behalf of his clients, 86 petitions
28 in 2010 and 55 petitions in 2011.

1 verification problem revealed in Rich's case represented an isolated incident or whether
2 it was part of a recurring pattern of conduct by Winter that justified harsher sanctions.

3 Following the court's request, the UST sent a letter to Winter, which instructed
4 him to deliver to the UST the signed original Petition, Schedules A through J, Statement
5 of Financial Affairs (the "SOFA"), Statement of Intention (the "SOI"), and Official
6 Form 22 (the "Means Test Forms") in 25 randomly selected cases.⁴ Winter was also
7 instructed to submit a signed statement under penalty of perjury indicating whether he
8 had obtained the debtors' signatures on the original documents in those cases prior to
9 filing the electronic versions with the debtors' "/s/" signatures.

10 He partially complied with the UST's request, delivering documents in 17 of the
11 25 cases along with a statement signed under penalty of perjury. In his response, Winter
12 stated that, to the best of his knowledge, the documents produced to the UST were
13 signed prior to their filing, but in one case, Winter had only required the debtor to verify
14 (and sign) the signature pages, rather than having him verify the entirety of the
15 documents.⁵ He also admitted that there were some cases not within the 25-case sample
16 where he had filed petitions on an expedited basis without first obtaining his client's
17 signatures on the petitions. In those cases, he stated that signatures were obtained shortly
18 thereafter. Winter, however, did not identify the cases where this had occurred.

19 For the remaining eight cases, Winter was unable to produce the signed original
20 documents to the UST because his office had not retained those documents.⁶ Winter
21 originally stated that the requirement of having to retain such documents was an "almost
22 laughable" task. He also admitted that in one of those eight cases he had failed to obtain
23

24 ⁴ Of the 25 cases, 24 were chapter 7 cases and one was a chapter 13 case.

25 ⁵ See *In re Sharits* (10-14364-A-7) in Appendix B3.

26 ⁶ See *In re Moore* (10-64848-B-7), *In re Oldham* (10-64846-B-7), *In re Phelan* (10-
27 63872-B-7), *In re Reed* (10-61847-A-7), *In re Olvera* (10-19813-B-7), *In re Lopez* (10-15667-B-
28 7), *In re S. Parker* (10-13482-B-7), and *In re Tyler* (10-13011-B-7) in Appendix B1.

1 signatures from a debtor prior to filing her petition and other documents, even though the
2 filed documents bore the debtor's virtual signature.⁷ In another case, Winter could not
3 recall whether he had obtained the debtor's signatures before or after e-filing. Because
4 the original documents in these eight cases were not retained or produced by Winter,
5 there was no way of confirming whether Winter obtained the debtors' signatures prior to
6 filing their documents.

7 With documents that Winter provided, the UST conducted his audit, examining
8 whether there were any issues with the preparation, signing, and filing of those
9 documents (the "Audit"). The Audit revealed a variety of issues in 16 of the 17 cases.⁸
10 In two cases, the debtors did not actually sign particular documents even though the filed
11 version included their virtual signatures, and in one of these two cases, the debtor signed
12 a document after the electronic version was filed, which showed an earlier signature
13 date.⁹ In three cases, handwritten changes were made to the signed original documents,
14 but those handwritten changes were not authenticated with the debtors' signature or
15 initials.¹⁰

16 Based on the files produced by Winter, it appeared to be common practice for
17 Winter's clients to sign documents where the date next to the signature line had already
18 been generated by the software, rather than being handwritten by the clients themselves.
19 In eight cases, the computer-generated signature dates did not match the dates stated on
20
21

22 ⁷ See *In re Olvera* (10-19813-B-7) in Appendix B2.

23
24 ⁸ Although the Audit did not uncover any issues with the 17th case, *In re Sharits* (10-
25 14364-A-7), Winter admitted that he had allowed the debtor to only sign and verify the signature
26 pages of the documents in that case. Thus, issues existed in all of his audited cases.

27 ⁹ See *In re Beckman* (10-18340-A-7) and *In re Esparza* (10-12218-A-7) in Appendix B2.

28 ¹⁰ See *In re Alec* (11-15120-A-7), *In re Thao* (11-13837-A-7), and *In re Cane* (10-64850-
B-7) in Appendix B3.

1 the filed versions.¹¹ In two cases, the original documents did not include any signature
2 dates, while the filed versions did.¹² In 12 cases, information in the signed original
3 Schedules, SOFAs, or Means Test Forms was inconsistent with the information provided
4 in the filed versions.¹³ And, in another case, handwritten changes made in the original
5 documents were not reflected in the filed versions.¹⁴

6 Finally, the Audit showed that, in six cases, the filed documents did not include
7 material information that had been disclosed to Winter on the clients' intake forms.¹⁵ In
8 one case, a debtor's payment of attorney's fees was not disclosed in the SOFA, contrary
9 to what Winter had stated in his Rule 2016(b) disclosure.¹⁶ In another case, a debtor's
10 SOFA failed to disclose the pre-petition transfer of a business even though the transfer
11 had been disclosed in the client's intake forms.¹⁷ And in another case, the Means Test
12 Form did not disclose income revealed on the filed Schedule I, which, if disclosed,

13
14
15
16 ¹¹ See *In re Gentleman*, (11-13838-A-7), *In re Thao* (11-13837-A-7), *In re Glock* (10-
17 63459-A-7), *In re Fritz* (10-61838-B-7), *In re Phonniseth* (10-19996-A-7), *In re Beckman* (10-
18 18340-A-7), *In re Brown* (10-18338-B-7), and *In re D. Parker* (10-16911-A-7) in Appendix B4.

19 ¹² See *In re Cane* (10-64850-B-7) and *In re Esparza* (10-12218-A-7) in Appendix B4.

20 ¹³ See *In re Tindall* (11-15155-B-13), *In re Delgado* (11-15123-A-7), *In re Alec* (11-
21 15120-A-7), *In re Thao* (11-13837-A-7), *In re Preas* (11-10978-B-7), *In re Iskenderian* (10-
22 63871-B-7), *In re Glock* (10-63459-A-7), *In re Fritz* (10-61848-B-7), *In re Brown* (10-18338-B-
23 7), *In re D. Parker* (10-16911-A-7), *In re Martinez* (10-14365-B-7), and *In re Esparza* (10-
24 12218) in Appendix B5.

25 ¹⁴ See *In re Beckman* (10-18340-A-7) in Appendix B5.

26 ¹⁵ See *In re Tindall* (11-15155-B-13), *In re Brown* (10-18338-B-7), *In re Martinez* (10-
27 14365-B-7), *In re Cane* (10-64850-B-7), *In re Fritz* (10-61848-B-7), and *In re Glock* (10-63459-
28 A-7) in Appendix B6.

¹⁶ See *In re Tindall* (11-15155-B-13) in Appendix B6.

¹⁷ See *In re Brown* (10-18338-B-7) in Appendix B6.

1 would have likely given rise to the presumption of abuse and supported a motion to
2 dismiss the case.¹⁸

3 The results of the Audit were summarized in a verified report compiled by the
4 UST and filed with the court (the "Verified Report").¹⁹ In response to the Verified
5 Report, Winter did not dispute the UST's findings and conceded that they were
6 "essentially correct." In his defense, Winter stated that he was unable to produce
7 additional documents to address the issues in the Verified Report, but blamed the
8 problem on alleged "deficiencies" in his office's record-keeping system, rather than any
9 personal wrongdoing.

10 At a follow-up hearing where the parties had an opportunity to address the issues
11 raised in the Verified Report, the court expressed its initial intention to sanction Winter
12 up to \$5,000 for violating the District's Local Bankruptcy Rules and Federal Rule of
13 Bankruptcy Procedure 9011, and to bar him from filing in this District any document
14 requiring the client's signature without also lodging a copy of the original showing that it
15 was actually signed by the client. The court then continued the matter for a third hearing
16 to allow the parties, including Winter, to file supplementary responses to the Verified
17 Report. Winter chose not to file any response.

18 **Discussion and Conclusions of Law.**

19 The problem that confronts the court here is twofold. The first arises from the
20 fact that Winter, an officer of the court, has systematically engaged in a practice of filing
21 incomplete and inaccurate schedules and other documents with the court. The second,
22 and most serious problem with regard to its affect on the court, and the entire bankruptcy
23 process, is the fact that the pleadings Winter did file with the court falsely and
24 fraudulently represented on their face that they had been reviewed by the clients and
25 verified as truthful under penalty of perjury. Without truthful, accurate and complete
26

27 ¹⁸ See *In re Fritz* (10-61848-B-7) in Appendix B6.

28 ¹⁹ The findings of the Verified Report have been summarized in Appendix A.

documents, the bankruptcy system simply cannot function, as illustrated here by the fact that the UST could not prosecute his adversary proceeding against Rich as a direct result of Winter's conduct. As the court in *Kavanagh v. Leija (In re Leija)*, 270 B.R. 497, 501 (Bankr. E.D. Cal. 2001) noted:

[T]he very purpose of certain sections of the law, like 11 U.S.C. § 727(a)(4)(A), is to make certain that those who seek the shelter of the bankruptcy code do not play fast and loose with their assets or with the reality of their affairs. The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction. . . . "[t]he successful functioning of the bankruptcy act hinges both upon the bankrupt's veracity and his willingness to make a full disclosure."

Citing *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987).

Bankruptcy Rule 5005 provides that "[a] court may by local rule permit or require documents to be filed, signed, or verified by electronic means." FED. R. BANKR. P. 5005(a)(2). Local Bankruptcy Rule 9004-1(c)(1)(C) & (D) (in effect at the commencement of this case) allows the use of "e-signatures" in documents electronically filed with the court's ECF system. However, the same Rule specifically prohibits the inappropriate use of electronic signatures on e-filed documents and imposes certain restrictions and requirements on this privilege. First, the Rule specifically provides that:

[t]he use of "/s/ Name" or a software-generated electronic signature on documents constitutes the registered user's representation that an originally signed copy of the document exists and is in the registered user's possession at the time of filing.

L.B.R. 9004-1(c)(1)(c).

Immediately following, the next subparagraph then states,

When "/s/ Name" or a software-generated signature is used in an electronically filed document to indicate the required signature(s) of persons other than that of the registered user, the registered user shall retain the originally signed document in paper form for no less than three (3) years following the closing of the case. *On request of the Court, the registered user shall produce the originally signed document(s) for review.*

L.B.R. 9004(c)(1)(d) (emphasis added).

Local Bankruptcy Rule 9004-1(c) is clear as to what is required of attorneys: They

1 must possess a signed original document when they file the electronic version, and they
2 must retain that original document for a number of years. Winter failed to do both in
3 many of his cases, including this one. In addition, Winter violated California Rule of
4 Professional Conduct 5-200 which provides, in pertinent part, that “[i]n presenting a
5 matter to a tribunal, [an attorney] . . . [s]hall not seek to mislead the judge . . . by an
6 artifice or false statement of fact or law.” CAL. RULES OF PROF’L CONDUCT R. 5-200(B).

7 In one case, Winter affirmatively acknowledged that he failed to obtain wet
8 signatures from a debtor prior to filing the debtor’s documents even though those filed
9 documents showed the debtor’s “/s/” signature. He also admitted that this failure to
10 obtain signatures occurred in other cases not within the 25-case sample. In two other
11 cases where Winter did produce documents, he filed certain documents bearing the
12 debtors’ e-signatures without having actually obtained their wet signatures beforehand.

13 In nine cases, including Rich’s, Winter violated the Local Bankruptcy Rule’s
14 second requirement, by being unable to produce signed original documents upon the
15 UST’s request. Winter’s response (that the document verification and signature problem
16 only mattered if the documents were inaccurate and that the document retention
17 requirement was “almost laughable”) illustrates clearly that Winter fails to grasp the
18 significance of what happened here. When a debtor signs his petition, he is affirming
19 that the information in the petition is true and correct and acknowledging that he
20 consents to the filing, consent which only the debtor can give. *See In re Werk*, 296 B.R.
21 719, 726–27 (Bankr. E.D. Va. 2002). “Bankruptcy is a very personal action which
22 should only be taken by the individual [debtor],” and not by his attorney. *Id.* at 726;
23 *accord In re Raymond*, 12 B.R. 906, 907 (Bankr. E.D. Va. 1981) (“Bankruptcy is a
24 personal exercise of a privilege and due to the seriousness of it, it may not be exercised
25 by another We perceive bankruptcy to be a very personal matter which only the
26 individual can voluntarily exercise.”). Not only does an attorney’s filing of an unsigned,
27 unauthorized petition affect the debtor, but it also affects his creditors given that any
28 filing of a voluntary petition creates the automatic stay. *See* § 362(a); *see also Wekell v.*

1 *United States*, 14 F.3d 32, 33 (9th Cir. 1994) (concluding that automatic stay is
 2 applicable even though the petition was filed by a person without authority to do so).
 3 When an attorney files an unsigned petition, the debtor receives the benefit of the
 4 automatic stay to the detriment of his creditors, all without the debtor exercising that
 5 privilege himself. Such a practice by an attorney therefore constitutes a “flagrant abuse
 6 of the bankruptcy process.” *Werk*, 296 B.R. at 726.

7 Further, as the Local Bankruptcy Rule explicitly provides, by filing a document
 8 purporting to have a debtor’s signature, Winter is making a representation to the court
 9 that an original document with the debtor’s original signature exists at the time of filing.
 10 L.B.R. 9004-1(c)(1)(c). As one bankruptcy court has provided, “When [a] petition [is]
 11 received, the court [is] presented with a document which stated on its face that [a] debtor
 12 had signed it, under penalty of perjury, when it was not true. This amounts to fraud.”
 13 *Werk*, 296 B.R. at 725. Electronically filing a petition purporting to have the debtor’s
 14 signature is no different from “physically forging [the] debtor’s signature and handling
 15 the petition over the counter to the clerk.” *Id.* Thus, by filing “e-signed” documents that
 16 the clients did not actually review and verify, Winter has perpetrated a fraud on the court.

17 **The Bankruptcy Court Has the Inherent Authority to Issue Sanctions to**
 18 **Prevent Abuse.** The bankruptcy court has both the express and inherent authority to
 19 regulate and sanction attorneys who practice before it. *See Peugeot v. U.S. Tr. (In re*
 20 *Crayton)*, 192 B.R. 970, 975 (9th Cir. BAP 1996). A bankruptcy court’s express
 21 sanctioning authority derives from the Code and the Rules. *In re Nguyen*, 447 B.R. 269,
 22 281 (9th Cir. BAP 2011) (en banc); *see also* L.B.R. 1001-1(g) (“Failure of counsel . . . to
 23 comply with [the Local Bankruptcy Rules, the Federal Rules of Civil Procedure, and the
 24 Federal Rules of Bankruptcy Procedure] . . . may be grounds for imposition of any and
 25 all sanctions authorized by statute or [r]ule.”). But in the absence of an applicable statute
 26 or rule authorizing sanctions, the bankruptcy court may rely on its inherent sanctioning
 27 authority. *In re DeVille*, 361 F.3d 539, 551 (9th Cir. 2004).

28 The Supreme Court has recognized that the federal district courts, through their status as

1 courts of justice, possess the inherent power to sanction. *See Chambers v. NASCO, Inc.*,
2 501 U.S. 32, 43–45 (1991) (“Courts of justice are universally acknowledged to be
3 vested, by their very creation, with power to impose silence, respect, and decorum, in
4 their presence, and submission to their lawful mandates.” (citation omitted) (internal
5 quotation marks omitted)). The Ninth Circuit subsequently held that bankruptcy courts
6 also possess the same inherent power. *Caldwell v. Unified Capital Corp. (In re Rainbow*
7 *Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996). The bankruptcy court’s inherent
8 authority derives from the very creation of the court and is evidenced by Congress’s
9 grant of power to the bankruptcy court under § 105(a) to prevent any abuse of process.
10 *Id.* at 283–84 (“By providing that bankruptcy courts could issue orders necessary ‘to
11 prevent an abuse of process,’ Congress impliedly recognized that bankruptcy courts have
12 the inherent power to sanction that *Chambers* recognized exists within Article III
13 courts.”).

14 The court’s inherent authority allows it to sanction a “broad range” of improper
15 conduct. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1196 (9th Cir. 2003) (citing
16 *Fink v. Gomez*, 239 F.3d 989, 992–93 (9th Cir. 2001) (determining limitation of federal
17 district court’s inherent sanctioning authority)). This sanctioning authority even applies
18 when addressing misconduct outside of the courtroom. *See W. Sys., Inc. v. Ulloa*, 958
19 F.2d 864, 873 (9th Cir. 1992) (citing *Chambers*, 501 U.S. at 57).

20 The authority to sanction attorney misconduct arises not only from the court’s
21 inherent powers to manage its cases and its courtroom, but also from the attorney’s role
22 as an officer of the court. *In re Brooks-Hamilton*, 400 B.R. 238, 247 (9th Cir. BAP
23 2009) (citing *Chambers*, 501 U.S. at 43; *In re Snyder*, 472 U.S. 634, 643 (1985)).
24 “When an attorney appears before a federal court, he is acting as an officer of that court,
25 and it is that court which must judge his conduct.” *Galam v. Carmen (In re Larry’s*
26 *Apartment, LLC)*, 249 F.3d 832, 838 (9th Cir. 2001) (internal quotation marks omitted)
27 (citing *Cord v. Smith*, 338 F.2d 516, 524 (9th Cir. 1964)).

28 As the Ninth Circuit has noted, “With respect to the court’s inherent power, . . . an

1 attorney admitted to a particular bar may be disciplined for conduct that violates that
 2 bar's *local rules of professional conduct*." *United States v. Wunsch*, 84 F.3d 1110, 1114
 3 (9th Cir. 1996) (emphasis added) (citation omitted). As an attorney admitted to practice
 4 before the federal courts in the Eastern District of California, Winter was obligated to
 5 comply with California's standards of professional conduct. *See* E.D. CAL. R. 180(e)
 6 (adopting the Rules of Professional Conduct of the State Bar of California, Rules 1-
 7 100-5-320, and the State Bar Act, codified at California Business & Professions Code
 8 §§ 6000-6238), *incorporated by* L.B.R. 1001-1©.

9 Here, the UST's Motion properly asserts that this court has the authority to order
 10 the disgorgement of fees pursuant to § 329(b) and Rule 2017(a),²⁰ in addition to the
 11 imposition of sanctions pursuant to L.B.R. 9004-1. *See* L.B.R. 9004-1(c)(1)(d) ("The
 12 failure to [produce signed original documents] may result in the imposition of
 13 sanctions."). Additionally, Winter's conduct is sanctionable under the authority of Rule
 14 9011. *See* FED. R. BANKR. P. 9011(c) ("If . . . the court determines that [Rule 9011(b)]
 15 has been violated, the court may . . . impose an appropriate sanction upon the attorneys
 16 . . . that have violated [Rule 9011(b)].").

17 **Disciplinary Process and Due Process.** As the Ninth Circuit has observed, there
 18 is "no uniform procedure for disciplinary proceedings in the federal system." *In re*
 19 *Lehtinen*, 564 F.3d 1052, 1062 (9th Cir. 2009) (citation omitted) (internal quotation
 20 marks omitted). As a result, the "individual judicial districts are free to define the rules
 21 to be followed and the grounds for punishment." *Id.* (citation omitted) (internal
 22 quotation marks omitted). In the Eastern District of California, the bankruptcy court is
 23 empowered to supervise and discipline attorneys pursuant to L.B.R. 1001-1(c), which
 24 specifically incorporates the District Court's L.D.R. 184. Local District Rule 184(a),
 25 titled "Discipline," provides, in pertinent part, the following:

26
 27 ²⁰ Since the court has already ordered Winter to disgorge his fees at the first hearing, the
 28 court does not need to discuss that here.

1 In the event any attorney subject to [the Local District Rules and Local
2 Bankruptcy Rules] engages in conduct that may warrant discipline or other
3 sanctions, any Judge . . . may, after reasonable notice and opportunity to show
4 cause to the contrary, take any [] appropriate disciplinary action against the
attorney. In addition to or in lieu of the foregoing, the Judge . . . may refer the
matter to the disciplinary body of any Court before which the attorney has been
admitted to practice.

5 E.D. CAL. R. 184(a), *incorporated by* L.B.R. 1001-1(c). This rule states that the court
6 “may refer” a matter involving attorney discipline to the appropriate disciplinary
7 authority. However, a plain reading of the rule shows that such referral is only
8 discretionary, and the bankruptcy court itself may hear the disciplinary matter. *See*
9 *Lehtinen*, 564 F.3d at 1062.

10 While the disciplinary procedures in this District appear flexible, what is required
11 before the court takes disciplinary action in any case is that the attorney subject to the
12 discipline be provided with procedural due process, including reasonable notice and an
13 opportunity to be heard. *Crayton*, 192 B.R. at 978 (citing *In re Ruffalo*, 390 U.S. 544,
14 550 (1968); *Rosenthal v. Justices of the Supreme Court of Cal.*, 910 F.2d 561, 564 (9th
15 Cir. 1990)); *see also* E.D. CAL. R. 184(a) (requiring “reasonable notice and opportunity
16 to show cause to the contrary” before taking disciplinary action).

17 Winter received adequate notice of his sanctionable conduct based on the UST’s
18 Motion, his Verified Report, and the court’s minute orders from the first and second
19 hearings. The Motion set forth Winter’s misconduct in Rich’s case and prayed for relief
20 pursuant to § 329, Bankruptcy Rule 2017, Local Bankruptcy Rule 9004-1(c)(1), and
21 § 105(a). At the First Hearing, the court also requested the UST to investigate Winter’s
22 conduct in 25 other cases. Winter was provided notice of other sanctionable conduct in
23 these 25 cases when the UST filed his Verified Report. The Verified Report clearly laid
24 out each incident of misconduct in the audited cases. At the second hearing, the court
25 provided Winter with notice that his conduct in both Rich’s case and the 25 other cases,
26 as specifically identified in the Verified Report, would be subject to the court’s
27 sanctioning authority.
28

1 Winter was given numerous chances to dispute the misconduct identified by the
 2 UST and the sanctions proposed by the court. The court held three hearings where
 3 Winter was given an opportunity to appear and present arguments on his own behalf.
 4 Winter filed responses to the UST's original Motion and to the UST's Verified Report,
 5 both of which the court has considered. Winter challenged only the proposed sanctions,
 6 but conceded that the misconduct identified by the UST was, in fact, "essentially
 7 correct."

8 **Bankruptcy Rules 9011 and 1008.** In addition to the Local Bankruptcy Rules,
 9 the court may rely on the Federal Rules of Bankruptcy Procedure, which also address the
 10 signing and filing of documents with the court. Generally, documents filed with the
 11 court need not be verified.²¹ See FED. R. BANKR. P. 9011(e). However, Rule 1008
 12 requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be
 13 verified or contain an unsworn declaration." FED. R. BANKR. P. 1008. Except for the
 14 petition, only the debtor may sign these documents; the debtor's attorney is prohibited
 15 from signing them himself. See FED. R. BANKR. P. 9011(a). "When [the Bankruptcy
 16 Rules] require copies of a signed or verified paper, it shall suffice if the original is signed
 17 or verified and the copies are conformed to the original." FED. R. BANKR. P. 9011(f);
 18 accord FED. R. BANKR. P. 1008 advisory committee's note.

19 The failure to obtain a signature on or verification of a document or to conform a
 20 filed document to its original relates directly to the representations made by an attorney
 21 to the court when such a document is filed. Bankruptcy Rule 9011(b) provides the
 22 following:

23 (b) Representations to the Court. By presenting to the court
 24 (whether by signing, *filing*, submitting, or later advocating) a *petition*,
 25 pleading, written motion, or *other paper*, an attorney . . . is certifying that
 to the best of [his] knowledge, information, and belief, formed after an
 inquiry reasonable under the circumstances,—

26
 27 ²¹ A "verification" means a "formal declaration made . . . under oath . . . whereby one
 28 swears to the truth of the statements in the document." BLACK'S LAW DICTIONARY 1698 (9th ed.
 2009).

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

FED. R. BANKR. P. 9011(b) (emphasis added).

As provided above, Winter's failure to obtain wet signatures on the documents he filed clearly constitutes a false representation to the court that the documents had been verified and signed, thereby being a violation of Rule 9011(b). *See Werk*, 296 B.R. at 725–26; 9 COLLIER ON BANKRUPTCY ¶ 1008.02, at 1008-3 (9th ed. 2009) (“With the advent of electronic filing of bankruptcy petitions, among the facts that the attorney is certifying by electronically filing a petition that indicates the debtor has signed it is that the debtor has, in fact, signed a paper copy of the petition.”).

Reasonableness of Sanctions. Local Bankruptcy Rule 9004-1(c)(1)(d) provides that an attorney's failure to produce signed original documents allows the court to impose sanctions. In addition, Bankruptcy Rule 9011(c) provides that an attorney's violation of Rule 9011(b) may result in the imposition of sanctions. Since the court has found that Winter's various actions in all of his cases violated both L.B.R. 9004-1(c)(1) and Bankruptcy Rule 9011(b), the court deems it appropriate to impose monetary sanctions against him. First, Winter will be required to reimburse the UST for his costs attributable to this matter, including preparation and filing the adversary complaint against Rich, for bringing the Motion against Winter, and for performing his Audit of Winter's cases and subsequently compiling his findings in the Verified Report. Second, Winter will be required to pay the court \$2,000 for repeatedly violating the Bankruptcy Rules and Local Bankruptcy Rules as discussed above.

Given that various document-related issues arose in virtually every case of the 25-case sample, it is also appropriate for the court to impose a limitation on Winter's e-

1 filing privileges. For a period of one year beginning September 1, 2012, after
2 electronically filing any petition, schedule, statement, or other document requiring the
3 debtor's signature, Winter must also file a copy of the original version of the "wet
4 signed" document. The e-filed version must conform to the "wet signed" copy.

5 Previously, the Bankruptcy Appellate Panel ("BAP") adopted the American Bar
6 Association Standards for Imposing Lawyer Sanctions ("ABA Standards"), using them
7 as the minimum standard in determining the reasonableness of sanctions. *Crayton*, 192
8 B.R. at 980–81. The ABA Standards "promote the thorough, rational consideration of
9 relevant factors, and help to achieve consistency when imposing attorney discipline." *Id.*
10 at 980. More recently, however, the BAP, sitting en banc, modified its holding in
11 *Crayton* that required the bankruptcy court to apply the ABA Standards. *Nguyen*, 447
12 B.R. at 277–78. The panel reasoned that

13 requiring a bankruptcy court to "slavishly intone" the ABA Standards makes little
14 sense given that sanctions are within the sound discretion of the bankruptcy court,
15 and that deference should be given to bankruptcy courts' choice of sanction in
that they have the inherent power to run the type of courtroom that they believe
best serves justice.

16 *Id.* at 277 (citation omitted) (internal quotation marks omitted).

17 The BAP therefore held that the bankruptcy courts "remain free to consult the
18 ABA Standards when formulating sanctions[, but] it is not reversible error if a
19 bankruptcy court does not do so." *Id.* at 278. Yet, not having to apply the ABA
20 Standards does not provide the bankruptcy court with unfettered discretion to impose any
21 sanctions it desires, however severe. The court's sanctions must still be reasonable, and
22 "reasonableness continues to require that the sanction imposed be within the scope of the
23 bankruptcy court's authority and that the sanction be tailored to address the misconduct."
24 *Id.* at 280.

25 Here, a sanction of \$2,000 is relatively mild in light of what happened in this case.
26 The reimbursement of costs incurred by the UST is reasonable and appropriate to
27 compensate the UST for the expense and effort he and his staff undertook to uncover and
28 clarify Winter's misconduct. *See Lehtinen*, 564 F.3d at 1059 (stating that sanctions

1 under the inherent authority are appropriate when they are compensatory). Winter fails
2 to appreciate that there can be absolutely no tolerance for what he did here. It cannot be
3 smoothed over and approved after the fact. The integrity of the bankruptcy court and the
4 bankruptcy system itself is jeopardized when practicing attorneys file false and
5 misleading documents with the court. As an officer of the court, Winter had an absolute
6 duty to prevent that from happening. Such conduct cannot be permitted under any
7 circumstances, even once, and it cannot be excused after the fact.

8 Although the language of L.B.R. 9004-1(c)(1)(d) does not contain any sort of
9 limitation on sanctions, Bankruptcy Rule 9011(c) does and thus provides the court with
10 some guidance on a limiting principle: “A sanction imposed for violation of this rule
11 shall be limited to what is sufficient to deter repetition of such conduct or comparable
12 conduct by others similarly situated.” FED. R. BANKR. P. 9011(c)(2). It is the court’s
13 hope that a \$2,000 sanction will sufficiently motivate Winter to run his office’s
14 operations within the confines of the local and professional rules. *See Zambrano*, 885
15 F.2d at 1479 (allowing imposition of “relatively mild” fines under court’s inherent
16 authority); *Mark Indus., Ltd. v. Sea Captain’s Choice, Inc.*, 50 F.3d 730, 733 (9th Cir.
17 1995) (stating that “[a]n appropriate award would be, at most, \$5,000 payable to the
18 court” under court’s inherent authority in that case).

19 With regard to the e-filing restriction, that too is an appropriate means to deter
20 Winter from allowing this problem to occur in the future. *Brooks-Hamilton*, 400 B.R. at
21 248. Given the scope of Winter’s conduct as revealed in the audited cases, the e-filing
22 restriction is reasonably tailored. *See DeVille*, 361 F.3d at 553 (noting that court’s
23 discretion in imposing sanctions is “subject to the principle that the sanctions should not
24 be more severe than reasonably necessary to *deter repetition of the conduct* by the
25 offending person” (emphasis added) (citation omitted) (internal quotation marks
26 omitted)). The e-filing restriction helps to prevent any further abuses of the bankruptcy
27 process. While this sanction may be an inconvenience for Winter, this sanction will
28

1 ultimately benefit all of the other relevant parties, including Winter's clients, the UST,
2 and the court itself, which greatly outweighs any hardship to Winter.

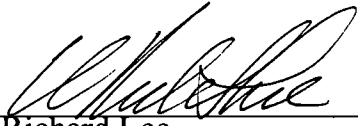
3 **Conclusion.**

4 Based on the foregoing, the UST's Motion will be granted. Within 10 days,
5 Respondent Joel D. Winter, Esq., shall comply with this court's civil minute order dated
6 July 13, 2011. He shall disgorge to the Debtor the attorney's fees paid in connection this
7 case in the amount of \$1,175 and/or file a proof of disgorgement. Within 30 days,
8 Winter shall pay a monetary sanction to the court in the amount of \$2,000 for numerous
9 violations of the Bankruptcy Rules and the Local Bankruptcy Rules as discussed above.

10 In addition, Winter shall reimburse the UST for his costs attributable to this
11 matter, including preparing and filing the adversary complaint against the Debtor,
12 bringing this motion, investigating Winter's other cases, and preparing the Verified
13 Report. Within 14 days, the UST shall file and serve on Winter a statement of the costs
14 incurred in connection with these matters. Thereafter, Winter shall have 14 days to
15 either pay the UST's bill of costs or file an opposition, stating specifically the basis for
16 his opposition to each cost item, and set the matter for a noticed hearing.

17 Finally, Winter shall, for a period of one year beginning September 1, 2012, not
18 electronically file in this District any document bearing the virtual signature of his client
19 without also filing a copy of the originally "wet signed" document.

20 Dated: August 29, 2012

21
22
23 
24 W. Richard Lee
25 United States Bankruptcy Judge
26
27
28

Scott Rich, Case No. 10-64847-B-7/DC No. UST-1

Scott Rich
35203 Rough Rider Way
Raymond, CA 93653

Bonnie J. Anderson, Esq.
Attorney at Law
1530 E. Shaw Ave., Suite 104
Fresno, CA 93710

Christian D. Jinkerson, Esq.
Attorney at Law
5260 N. Palm Ave., Ste. 201
Fresno, CA 93704

Joel D. Winter, Esq.
Attorney at Law
P.O. Box 2922
Clovis, CA 93613

Sheryl Ann Strain
Chapter 7 Trustee
575 E. Alluvial Ave., #101
Fresno, CA 93720

Robin Tubesing, Esq.
Attorney at Law
Office of the U.S. Trustee
United States Courthouse
2500 Tulare Street, Suite 1401
Fresno, CA 93721